



**Pierce County**

Office of the Prosecuting Attorney

**MARK LINDQUIST**  
Prosecuting Attorney

REPLY TO:  
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March 24, 2017

Honorable Susan L. Carlson  
Supreme Court Clerk  
P.O. Box 40929  
Olympia, WA 98504-0929

Re: Proposed Rule GR 36

Dear Clerk Carlson:

I respectfully oppose the American Civil Liberties of Washington's (ACLU) proposed rule and would request that the Court consider the alternative rule proposed by the Washington Association of Prosecuting Attorneys (WAPA). The alternative rule proposed by WAPA is a more comprehensive approach and is in accordance with the current state of the law.

The ACLU's proposed rule would implement a standard that is contrary to existing law. It would require that a preemptory challenge be denied on the ambiguous standard that race or ethnicity "could" be a factor. This proposal would severely limit the trial judge's ability to examine the circumstances surrounding the preemptory challenge.

Also, the ACLU rule does not require a party to make a timely objection. Issues involving the qualification of a juror are better addressed and resolved at the trial court level, as the trial court is in the best position to observe the conduct of the juror and all parties. To *allow otherwise would require the reviewing court to speculate in a situation where the record could easily have been developed following a timely objection.* As the appellate courts in Washington have previously held, a trial court is in a better position to examine the circumstances of a peremptory challenge.

Finally, while I agree that the rights of prospective jurors should be protected, the ACLU proposed rule is lacking in its failure to provide clear guidance to trial courts as to how best address this issue. I would urge this court to reject the ACLU proposed rule and adopt the WAPA alternative rule, which codifies the existing law and protects the equal protection *rights of prospective jurors.*

Very truly yours,

Michelle Hyer  
Deputy Prosecuting Attorney  
Appellate Division Chief



**Tracy, Mary**

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**From:** OFFICE RECEPTIONIST, CLERK  
**Sent:** Monday, March 27, 2017 11:43 AM  
**To:** Tracy, Mary  
**Subject:** FW: Comment Letter  
**Attachments:** Untitled.PDF

Forwarding.

**From:** Heather Johnson [mailto:hjohns2@co.pierce.wa.us]  
**Sent:** Monday, March 27, 2017 10:53 AM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Subject:** Comment Letter

Michelle Hyer, WSB No. 32724  
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[Mhyer@co.pierce.wa.us](mailto:Mhyer@co.pierce.wa.us)

Attached please find the Comment Letter in regards to Proposed Rule GR 36. If this is not the proper way of filing this with the Court please let me know.

Thank you.

Heather Johnson  
Legal Assistant to the Appellate Unit